

PUBLIC EMPLOYMENT RELATIONS BOARD [621]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 2, “General Practice and Hearing Procedures,” and Chapter 3, “Prohibited Practice Complaints,” Iowa Administrative Code.

Items 1 and 2, although presented as new rules, instead reflect the transfer of present rules 621—3.10(20) and 621—3.11(20), including amendments identified in the Board’s ongoing review of its administrative rules, to a more appropriate and intuitive location in Chapter 2.

Items 3 through 11 reflect amendments to existing rules concerning proceedings on prohibited practice complaints which have also been identified in the Board’s ongoing rules review project.

Items 12 and 13 reflect the rescission of the two rules amended and transferred to Chapter 2 by items 1 and 2.

Item 14 proposes the adoption of a new rule which implements the Iowa Code section 20.11(3) requirements that the Board appoint a certified shorthand reporter to report prohibited practice proceedings and to tax the reasonable amount of compensation for such reporting, and for any transcript requested by the Board, as costs.

These rules do not provide for a waiver of their terms, but are instead subject of the Board’s general waiver provisions found at rule 621—1.9(17A,20).

Any interested person may make written suggestions or comments on the proposed amendments on or before November 4, 2014. Written suggestions or comments should be directed to Michael G. Cormack, Chairperson, Public Employment Relations Board, 510 E. 12th Street, Des Moines, Iowa 50319; or Mike.Cormack@iowa.gov.

Persons who wish to convey their views orally should contact the office of the Public Employment Relations Board by telephone at (515)281-4414 or in person at the Board's office at the address noted above.

Requests for a public hearing must be received by November 4, 2014.

After review and analysis of this proposed rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 20.

The following amendments are proposed:

ITEM 1. Adopt the following **new** rule 621—2.23(20):

621—2.23(20) Informal disposition. The board may assign an administrative law judge to assist the parties in reaching a settlement of any dispute which is the subject of an adjudicatory proceeding. However, no party shall be required to participate in mediation or settle the dispute pursuant to this rule. An administrative law judge assisting the parties under this rule shall not serve as a presiding officer in any proceeding related to the dispute. Adjudicatory proceedings may be voluntarily dismissed without consent of the board except as provided in rule 621—3.6(20) and 621—subrule 4.1(3).

ITEM 2. Adopt the following **new** rule 621—2.24(20):

621—2.24(20) Evidence of settlement negotiations. Evidence of proposed offers of settlement of a contested case or a proceeding that may culminate in a contested case shall be inadmissible at the hearing thereon.

ITEM 3. Amend the title of 621—Chapter 3 as follows:

CHAPTER 3 PROHIBITED PRACTICE ~~COMPLAINTS~~ PROCEEDINGS

ITEM 4. Amend rule 621—3.1(20) as follows:

621—3.1(20) Filing of complaint. A complaint that any ~~person, employee, organization or public employer, public employee or employee organization~~ has ~~engaged in or is engaging in~~ committed a prohibited practice ~~under the Act within the meaning of Iowa Code section 20.10(1), that any public employer or the employer's designated representative has committed a prohibited practice within the meaning of Iowa Code section 20.10(2), or that any public employee, employee organization, person, union or organization or their agents has committed a prohibited practice within the meaning of Iowa Code section 20.10(3) may be filed with the agency~~ by any person, employee organization or public employer with standing ~~:A complaint~~

~~shall be in writing and signed according to these rules, and may be on a form provided by the board. The complaint shall be filed with the board within 90 days following the alleged violation commission of the prohibited practice.~~

ITEM 5. Amend rule 621—3.2(20) as follows:

621—3.2(20) Contents of complaint. The complaint, which may utilize the form available from the board's website, shall be in writing, signed by the complainant or its designated representative, and shall include the following:

3.2(1) The name, address, telephone number and email address and organizational affiliation, if any, of the complainant, and, if filed by the complainant's designated representative, the name, title, telephone number and email address of any that representative filing the complaint.

3.2(2) The name and address of the respondent(s) alleged to have committed the prohibited practice and any other party named therein.

3.2(3) A clear and concise statement of the facts constituting the alleged prohibited practice, including the names of the individuals involved in the alleged act(s), the date(s) and place(s) of the alleged act(s) occurrence, and the specific section(s) subsection(s) and paragraph(s) of the Act Iowa Code section 20.10 alleged to have been violated.

ITEM 6. Amend rule 621—3.3(20) as follows:

621—3.3(20) Clarification of complaint. Although compliance with technical rules of pleading is not required, the The board agency may, on either its own motion or motion of the respondent, require the complainant to make the complaint more specific.

ITEM 7. Amend rule 621—3.4(20) as follows:

621—3.4(20) Service of complaint. The complainant shall, within a reasonable time following the filing of a complaint, serve the all named respondent(s) with a copy of the complaint in the manner of an original notice or by certified mail, return receipt requested, together with an agency-approved information sheet regarding mandatory electronic filing. Such service shall be upon the person(s) designated for service by 621—subrule 2.15(1), and the complainant shall file proof thereof with the agency in accordance with 621—subrules 2.15(3) and 16.10(1).

ITEM 8. Amend rule 621—3.5(20) as follows:

621—3.5(20) Answer to complaint.

3.5(1) Filing and service. Within ten days of service of a complaint, the respondent(s) shall file with the board agency an written answer to the complaint, and cause a copy to be delivered to the complainant by ordinary mail to the address set forth in the complaint. The answer shall be signed by the respondent(s) or the its designated representative of the respondent(s). The answer shall be served through the electronic document management system unless the respondent is exempted from electronic filing in the proceeding, in which case service shall be in accordance with 621—subrules 2.15(2) and 2.15(3), and upon the person who signed the complaint being answered.

3.5(2) Extension of time to answer. The parties may agree to an extension of the time to answer and shall inform the agency of their agreement or the board may, Upon upon application and good cause shown, the board may extend the time to answer to a time and date certain.

3.5(3) Contents of answer. The answer shall ~~include a specific admission or denial of~~ specifically admit or deny each allegation of the complaint and may set forth additional facts deemed to constitute a defense, ~~or, if~~ If the respondent is without knowledge thereof sufficient to make an admission or denial concerning an allegation, the respondent answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation, but shall fairly meet the ~~circumstances~~ substance of the allegations. ~~The answer shall include a specific statement of any affirmative defense. Matters contained~~ Additional facts set forth in the answer shall be deemed denied by the complainant.

3.5(4) Admission by failure to answer. If the respondent fails to file a timely answer, such failure may be deemed by the board to constitute an admission of the material facts alleged in the complaint and a waiver by the respondent of a hearing.

ITEM 9. Amend rule 621—3.6(20) as follows:

621—3.6(20) ~~Withdrawal~~ Voluntary dismissal or withdrawal of complaint. At any time prior to the issuance of a proposed decision (or final decision if heard originally by the board) ~~A~~ a complaint or any part thereof may be voluntarily dismissed by the complainant ~~withdrawn with the consent of the board, and upon conditions the board may deem proper. Withdrawal shall constitute a bar to refile the same complaint or part thereof by the complainant.~~ Complaints may be withdrawn following the issuance of a proposed decision, but before the proposed decision becomes the agency's final decision, only with the consent of the board and upon conditions the board may deem proper.

ITEM 10. Rescind and reserve rule **621—3.7(20)**.

ITEM 11. Amend rule 621—3.8 as follows:

621—3.8(20) Investigation of complaint. The board or its designee may conduct a preliminary investigation of the allegations of any complaint. In conducting such investigation, the board may require the complainant and respondent to furnish evidence, including affidavits and other documents if appropriate. If a review of the evidence shows that the complaint has no basis in fact, the complaint may be dismissed with prejudice by the board and the parties notified. ~~Board employees~~ Administrative law judges involved in investigations under this rule shall not act as administrative law judges presiding officers in any proceeding related to the investigation prohibited practice complaint.

ITEM 12. Rescind and reserve rule **621—3.10(20)**.

ITEM 13. Rescind and reserve rule **621—3.11(20)**.

ITEM 14. Adopt the following new rule 621—3.12(20):

621—3.12(20) Costs of certified shorthand reporters and transcripts.

3.12(1) Initial payment. The agency will arrange for a certified shorthand reporter to report the contested case hearing and request that an original transcript of the hearing be prepared by the reporter for the agency's use. The agency shall initially pay the reporter's reasonable compensation for reporting the hearing and producing the agency-requested transcript.

3.12(2) *Taxation as costs.* The cost of reporting and of the agency-requested transcript shall be taxed as costs against the non-prevailing party or parties although the presiding officer, or the board on appeal or review of a proposed decision and order, may apportion such costs in another manner if appropriate under the circumstances.

3.12(3) *Payment of taxed costs.* Following final agency action in a case, the agency will prepare and serve a bill of costs upon the party or parties against whom the costs have been taxed. Those parties shall, within 30 days of such service, remit to the agency the amount specified in the bill of costs. Sums remitted to the agency shall be considered repayment receipts as defined in Iowa Code section 8.2.

These rules are intended to implement Iowa Code chapter 20.

September 10, 2014

/s/

Michael G. Cormack, Chair
Public Employment Relations Board